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**Guy M. Hicks**  
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APR 25 1997  
BELL SOUTH  
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April 25, 1997

**VIA HAND DELIVERY**

Mr. David Waddell, Executive Secretary  
Tennessee Regulatory Authority  
460 James Robertson Parkway  
Nashville, Tennessee 37238

Re: *BellSouth Telecommunications, Inc.'s Entry Into Long Distance  
(InterLATA) Service in Tennessee Pursuant to Section 271 of  
the Telecommunications Act of 1996*  
Docket No. 97-00309

Dear Mr. Waddell:

Enclosed are the original and thirteen copies of BellSouth Telecommunications, Inc.'s Objections to Hearing Officer's Report and Recommendation in the above-referenced matter. A copy has been provided to counsel of record.

Very truly yours,

  
Guy M. Hicks

GMH/jem

Enclosure

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Nashville, Tennessee

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In Re: ***BellSouth Telecommunications, Inc.'s Entry Into Long Distance  
(InterLATA) Service in Tennessee Pursuant to Section 271 of  
the Telecommunications Act of 1996***

Docket No. 97-00309

**BELLSOUTH TELECOMMUNICATIONS, INC.'S**  
**OBJECTIONS TO HEARING OFFICER'S**  
**REPORT AND RECOMMENDATION**

**I. INTRODUCTION**

BellSouth Telecommunications, Inc. ("BellSouth") respectfully submits its objections to the Report and Recommendation of the Hearing Officer, the Honorable Melvin J. Malone, which was filed with the Tennessee Regulatory Authority ("TRA") on April 18, 1997. BellSouth is committed to providing the TRA with all the information necessary for the TRA's consideration of BellSouth's entry into the interLATA market in Tennessee and generally agrees with the procedural framework recommended by the Hearing Officer. However, BellSouth believes that three of the Hearing Officer's recommendations should not be adopted because they will either be of no assistance to the TRA in fulfilling its statutory obligations or will have adverse consequences that were not considered at the Status Conference or addressed in the Report and Recommendation. BellSouth files these objections to bring its concerns to the TRA's attention.

## **II. DISCUSSION**

### **A. The 90-Day Notice Period Should Not Start "Anew" If BellSouth Is Required To File With The FCC Under Track A After Previously Giving The TRA Notice Of Its Intent To Proceed Under Track B.**

BellSouth objects to the Hearing Officer's recommendation that "should BellSouth notify the TRA in its initial 90-day notice that it is filing under one Track, and later notifies the TRA that it has decided to proceed instead under the opposite Track, the 90-day period will start anew at the time of the second notification." (Report and Recommendation at 7, n.8). This recommendation erroneously presupposes that BellSouth has the latitude in deciding under which Track to seek interLATA authority and that the evidence supporting BellSouth's application will change significantly if BellSouth is forced to change Tracks, which is simply not the case. Furthermore, and most importantly, adoption of the Hearing Officer's recommendation could unduly delay BellSouth's entry into long distance to the detriment of Tennessee consumers.

Although the parties have been directed to file briefs on the interplay between Track A and Track B, no dispute exists that BellSouth presently cannot obtain interLATA authority in Tennessee under Track A. Because there is no competitor with an interconnection agreement actually providing telephone exchange service to residential and business subscribers exclusively or predominantly over its own facilities in Tennessee, Track A is unavailable to BellSouth at the present time. Thus, as it has previously advised the TRA, BellSouth intends to seek interLATA authority under Track B.

However, Track B may become unavailable to BellSouth at some point in the future. Although the parties disagree about what constitutes a qualifying facilities-based provider for purposes of Track A, there is no dispute that, if such a provider emerges in Tennessee, BellSouth would be foreclosed from seeking interLATA authority under Track B (subject to the three month grace period in 47 U.S.C. § 271(c)(1)(B)). Thus, if a qualifying provider under Track A emerges after BellSouth has given the TRA the requisite 90 days' advance notice of its intent to file with the FCC under Track B, BellSouth would have no choice but to file for interLATA authority under Track A (subject to three month grace period). Under which Track BellSouth can obtain interLATA authority therefore is a function of the actions of BellSouth's competitors, and not BellSouth's simply "deciding" to switch Tracks, as the Hearing Officer suggests.

Furthermore, even if the competitive circumstances in Tennessee change necessitating a filing under Track A, the TRA would be able to fulfill its consultative function without restarting the 90-day period. Much of the evidence and documentation to be provided by BellSouth will be relevant regardless of whether BellSouth is seeking interLATA authority under Track A or Track B. This includes evidence and documentation of: (1) BellSouth's compliance with the fourteen-point competitive checklist under Section 271(c); (2) why entry of a BellSouth company into the interLATA market in Tennessee is in the public interest; and (3) compliance with the separate subsidiary requirement of Section 272. Thus, while there may be a "new" application in the sense that it would be submitted under Track A instead

of Track B, most of the evidence and documentation supporting that application will not be “new.”

Requiring that the 90-day period start “anew” simply because the competitive circumstances have changed in Tennessee could penalize Tennessee consumers by unnecessarily delaying the benefits that BellSouth’s entry into the long distance market will bring. Those benefits can be very substantial. For example, Dr. William Taylor, a noted economist, has estimated that BellSouth’s entry into the long distance business in Georgia would create benefits worth \$170 per access line per year for Georgia consumers. According to a nationally known consulting group, the total state-wide benefits in Georgia flowing from lower long distance prices due to BellSouth’s entry would be worth about \$3.3 billion over ten years. Similar benefits likely will accrue to consumers in Tennessee. Such benefits should not be delayed by requiring an additional 90-day period simply because BellSouth is compelled to file for interLATA authority under Track A instead of Track B.

**B. BellSouth Should Be Required To Notify The TRA of “Material” Changes In The Section 271 Application And Should Be Required to “Redline” Changes In Substance, Not In Form.**

The Hearing Officer recommends that a “good faith continuing obligation” be imposed upon BellSouth “to update its Section 271 application with respect to *any* changes, revisions or additions.” (Report and Recommendation at 7) (emphasis added). While BellSouth has committed to keeping the TRA informed of material changes in its Section 271 application and supporting documentation, BellSouth is

troubled by a requirement that it file with the TRA every single change, revision, or addition that may be made over the course of these proceedings. Such a requirement could become a "tool" that intervenors could use to delay proceedings at either the TRA or the FCC.

The application and supporting documentation is very much a work in progress. Once the initial draft has been prepared, the application and supporting documentation will be refined and updated, particularly since BellSouth is furnishing the application and supporting documentation to the TRA at least two months before it is actually filed with the FCC. Certain changes may be minor or stylistic. Others will be substantive, reflecting changes in the competitive market in Tennessee or addressing concerns raised by State commissions or the FCC in other Section 271 proceedings. The TRA should be kept abreast of such material changes. However, materiality should be the standard, and BellSouth's obligation to submit additional information to the TRA should not be triggered simply as a result of "any" change, revision, or addition to the Section 271 application.<sup>1</sup>

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<sup>1</sup> The word "material" may have been inadvertently omitted from this portion of the Report and Recommendation. First, the Hearing Officer noted that BellSouth had agreed to act in good faith "in updating any *material* changes, revisions or additions" to the documentation that BellSouth will be providing to the TRA which it intends to rely upon before the FCC in support of its Section 271 application. (Report and Recommendation at 7). BellSouth believes that the standard should be the same with respect to the application itself. Second, the Hearing Officer directed counsel for BellSouth and MCI to confer and "formulate some language" that would address when BellSouth would be obligated to inform the TRA of changes in the Section 271 application and supporting documentation. (4/3/97 TR. at 85). Although the Hearing Officer indicated that he may or may not accept the parties' recommendation, BellSouth and MCI agreed that BellSouth's obligation should only be triggered when there has been a "material" change.

BellSouth also objects to the Hearing Officer's recommendation that BellSouth be required to "redline" any change in the "form" of the documentation submitted to the TRA when BellSouth gives the requisite 90 days' advance of the FCC filing and the documentation submitted with a copy of the Section 271 application. (Report and Recommendation at 7, n.9). The documentation that BellSouth intends to submit to the TRA when it gives the requisite advance notice will consist of prefiled testimony and exhibits. The filing will be lengthy and will address in detail the evidence and information that BellSouth will rely upon before the FCC in support of its Section 271 application. By contrast, the Section 271 application and supporting documentation will consist of written documents and affidavits that will bear little resemblance in *form* (although they will be substantially identical in content) to the prefiled testimony previously submitted. Although BellSouth has no objection to redlining changes in "content" and "substance" as proposed by the Hearing Officer, the recommendation that BellSouth redline changes in "form" is unworkable.

**C. The Consumer Advocate Division Should Not Be Permitted To Serve Discovery.**

BellSouth objects to the Hearing Officer's recommendation that the Consumer Advocate Division ("CAD") be permitted to serve discovery requests on BellSouth. (Report and Recommendation at 5). Such discovery is unnecessary and will not assist the TRA in fulfilling its statutory obligation to consult with the FCC concerning BellSouth's entry into the interLATA market in Tennessee.

If the procedural framework proposed by the Hearing Officer is adopted, BellSouth will be subject to stringent disclosure requirements. Specifically, during the course of these proceedings, BellSouth must furnish the TRA with: (1) "all evidence and information, of whatever nature, that it will rely upon before the FCC in support of the Section 271 application"; (2) "a copy of the Section 271 application to be filed with the FCC" as well as all "supporting documentation"; and (3) certain "changes, revisions or additions to said documentation." (Report and Recommendation at 6-7). In addition, BellSouth will be responding to discovery requests from the TRA Staff, which will provide any additional information the Directors or the Staff may require in considering such entry.

These procedures put the TRA "in the position to get any and all information it needs," which is the concern articulated by the Hearing Officer. (4/3/97 TR. at 81). Discovery by the CAD adds nothing to this process.

Although the Hearing Officer is correct that none of the parties specifically objected to the CAD's request for discovery, (Report and Recommendation at 5), BellSouth was on record as early as February 18, 1997 "that a contested case is unnecessary in this proceeding ...." (2/18/97 TR. at 50-51). As BellSouth's counsel explained at the Status Conference:

What BellSouth does not want is BellSouth didn't want a contested case proceeding. I don't think AT&T wanted that either. *And by that I mean discovery, on and on*, and all of the rigors of going through a contested case proceeding.

(4/3/97 TR. at 100-101).



Furthermore, when the issue of discovery by the TRA Staff was discussed, the Hearing Officer specifically asked the parties if they had "[a]ny objections." By contrast, when the CAD requested that it be permitted to serve discovery on BellSouth, the Hearing Officer did not specifically ask if any party objected, but merely responded that he would take the CAD's request "under advisement." (4/3/97 TR. at 81-82). Had the Hearing Officer specifically asked, BellSouth would have made clear its objection to discovery by the parties.<sup>2</sup>

### **III. CONCLUSION**

BellSouth understands the importance of the TRA being kept fully informed about BellSouth's plans for entry into the interLATA market in Tennessee in order to fulfill its consultative function. As Ameritech's recent experience illustrates, BellSouth needs and wants the TRA's support when it actually files for interLATA authority with the FCC. Thus, BellSouth has no incentive to withhold information from the TRA or to allow the TRA to be "surprised" with facts or evidence after it has been asked to consult with the FCC. However, the process adopted by the TRA should be designed to fulfill its statutory obligations without adversely affecting either BellSouth or Tennessee consumers. BellSouth submits that adopting the

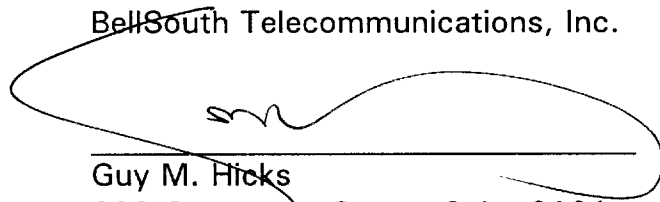
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<sup>2</sup> Although BellSouth objects to discovery by the CAD, BellSouth believes that it is "appropriate" for the Staff to be able to engage in discovery. (4/3/97 TR. at 81). In contrast to the CAD, the Staff is not a party, and discovery requests from the Staff will assist the TRA in gathering the information necessary to fulfill its consultative function. Discovery by the Staff is completely consistent with BellSouth's desire "to provide whatever evidence the Directors would need ...." (3/4/97 TR. at 63).

Hearing Officer's Report and Recommendation, with the modifications BellSouth has suggested, will accomplish this objective.

Respectfully submitted,

BellSouth Telecommunications, Inc.

A handwritten signature in black ink, appearing to read "Guy M. Hicks", is written over a horizontal line. The signature is enclosed within a large, hand-drawn oval.

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### **CERTIFICATE OF SERVICE**

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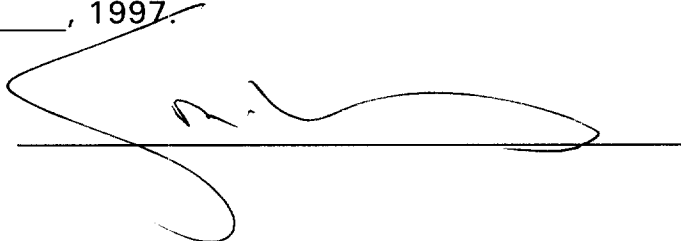
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on this 25<sup>th</sup> day of April, 1997.

A large, stylized handwritten signature, likely of Ed Phillips, written in black ink over a horizontal line.

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